

No. 15826

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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CECIL M. JACKSON, BANKRUPT,

*Appellant,*

*vs.*

A. S. MENICK, Trustee in Bankruptcy of Cecil M. Jackson,

*Appellee.*

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## APPELLANT'S OPENING BRIEF.

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## APPELLANT'S OPENING BRIEF.

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### Statement of Jurisdiction.

The Bankruptcy Act, Section 24A (11 U. S. C. §47). The United States Court of Appeals in vacation, in chambers, and during their respective terms does now or as they may hereafter be held, are hereby invested with Appellate jurisdiction from the several courts of Bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse both in matters of law and in matters of fact: Provided however, that the jurisdiction upon Appeal from a judgment on a verdict rendered by a jury shall extend to matters of law only: and, provided further, that when any order, decree or judgment involves less than \$500.00 an appeal therefrom

may be taken only upon the allowance from the appellate court.

*In the Matter of Bush Terminal Co.* (C. C. A. 2, 1939), 40 A. B. R. (N. S.) 581, 105 F. 2d 156;

*Robertson v. Berger* (C. C. A. 2, 1939), 39 A. B. R. (N. S.) 1062, 102 F. 2d 530;

*Coursey v. International Harvester Co.* (C. C. A. 10, 1940), 42 A. B. R. (N. S.) 291, 109 F. 2d 774.

The order of the bankruptcy court as to exemptions is conclusive, subject, of course, to review on appeal and may not be collaterally attacked.

*Friedsam v. Rose, State Court Decision* (Tex. 7 Appeal), 6 A. B. R. (N. S.) 864, 271 S. W. 417.

### Statement of the Case.

This is an appeal by a bankrupt from Order Granting Petition for Review, Setting Aside Referee's Order and Determining that Bankrupt Does Not Have a Valid Claim of Homestead Exemption.

In his scheduled file with his bankruptcy petition, the bankrupt claimed exemption of a homestead on a certain parcel of real property. This exemption was claimed pursuant to a declaration of homestead filed by the bankrupt and his wife on May 21, 1954, in the County Recorder's Office, City of Los Angeles, County of Los Angeles, State of California. The trustee in bankruptcy, A. S. Menick, respondent in the present action, refused to set aside the property as exempt, contending that the declaration of homestead recorded on May 21, 1954 [Ex. I] was void and of no effect for the reason that no description of the property claimed as a homestead was found in the declaration. Objections were filed to this report of the trustee's

determination of property by the bankrupt. The Referee, David B. Head, after hearing, sustained the objections of the bankrupt to the trustee's determination of exempt property and entered an order on January 8, 1957, allowing the homestead exemption on the bankrupt's real property. The trustee, A. S. Menick, appellee herein, filed a petition for review of the order of the Referee dated January 8, 1957, and to set aside said order. The Court, Thurmond Clarke, on October 18, 1957, entered an order that the order of the Referee dated January 18, 1957, be set aside and reversed. This appeal is taken from said order.

The facts in this case are not disputed. The bankrupt was living with his family on the property claimed as exempt on May 21, 1954, the date of the recording of a declaration of homestead by the bankrupt and his wife in the County Recorder's Office, City of Los Angeles, County of Los Angeles, State of California. This declaration of Homestead was completely filled out in all respects, except Paragraph 3 of said document did not contain the description of the property sought to be homesteaded.

The Homestead Declaration [Ex. 1] states as follows:

“(3) They are now residing on the land and premises located in the City of Los Angeles, County of Los Angeles, State of California, and more particularly as follows: (No description of the premises is set out)

\* \* \* \* \*

“(6) No former declaration of homestead has been made by them, or either of them, except as follows:

“The former declaration of homestead was abandoned on or about March 12th, 1954.

“(7) The character of said property so sought to be homesteaded and the improvement or improvements which have been affixed thereto, are as follows: Six-room residence and garage.”

On March 12, 1954, the bankrupt and his wife filed an abandonment of homestead [Ex. 2] which described the property upon which the homestead was abandoned as follows:

“Lot 2 in block 8 of Brentwood Park in the City of Los Angeles, County of Los Angeles, State of California as per map recorded in Book 9, page 10 of Maps, in the Office of the County Recorder of said County.

“Also that portion of Avondale Avenue and Hanover Street, abandoned by Ordinance No. 41346 (New Series of said City), adjoining said lot 2 on the northwest, bounded on the north by the southerly line of said Hanover Street, as now established 75 feet wide, and on the west by the easterly line of said Avondale Avenue, as now established 75 feet wide.

“Commonly known as 306 Avondale Avenue, Los Angeles, California.”

The first Declaration of Homestead [Ex. 3] which was abandoned gave the same description excepting the street address.

No evidence was introduced at the hearing before Referee Head or at any other step in the proceedings nor has it been claimed at any time that the bankrupt owned any other real property in the City of Los Angeles, County of Los Angeles, State of California, on which he might have attempted to claim a Homestead by recording the Declaration of Homestead on May



21, 1954, other than the property described in Exhibit 2 and Exhibit 3; that this is the only piece of real property he owned at the time he made the Declaration of Homestead or any other time.

The sole issue in this Appeal is whether the Declaration of Homestead was sufficient, complete and adequate to meet the requirements of the statute, California Civil Code, Section 1263, as interpreted by the Courts of the State of California.

### Specification of Error.

#### I.

That the Court erred in granting the Petition for Review Setting Aside the Referee's in Bankruptcy Order of January 8, 1957, and determining that the Bankrupt did not have a valid claim of homestead exemption.

#### II.

That the Court erred in finding that the Declaration of Homestead recorded by the bankrupt and his wife on May 21, 1954 did not comply with provisions of Section 1263 of the Civil Code of the State of California.

#### III.

That the Court erred in finding that the Declaration of Homestead recorded by the bankrupt and his wife on May 21, 1954, did not set forth an adequate description of the real property claimed as exemption.

#### IV.

That the Court erred in finding that the Declaration of Homestead recorded by the bankrupt and his wife on May 21, 1954, did not contain a sufficient reference to a previously recorded document containing a full and complete description of the property homesteaded.

V.

That the Court erred in concluding as a matter of law that the Declaration of Homestead was a nullity and the bankrupt was not entitled to a claim of exemption by reason of the homestead recorded on May 21, 1954.

VI.

That the Court erred in concluding as a matter of law that the Declaration of Homestead recorded by the bankrupt and his wife on May 21, 1954, did not contain within its four corners sufficient data including a reference to a previously recorded document to comply with the provisions of Section 1263 of the Civil Code of the State of California.

**Summary.**

The bankrupt, by referring in the Declaration of Homestead, recorded on May 21, 1954, to a specific document recorded on a specific day, made an adequate reference to supply the description absent from the Declaration of Homestead recorded on said date. That the evidence from Exhibits 1, 2 and 3, is uncontradicted and shows that at all times in question the bankrupt and his family resided on the property sought to be homesteaded.

## ARGUMENT.

### I.

The Court Erred in Entering an Order on October 18, 1957, Setting Aside the Order of the Referee Declaring the Bankrupt's Right to Have the Homestead Exemption as to the Real Property Allowed and Concluding as a Matter of Law That the Declaration of Homestead Recorded May 21, 1954, Did Not Contain an Adequate Description or a Reference to a Previously Recorded Document Adequate to Supply the Legal Description.

The description of the property sought to be homesteaded need be no more specific in a Declaration of Homestead than in a conveyance.

*Ornbaum v. Creditors*, 61 Cal. 455;

*Jones v. Gunn*, 149 Cal. 687.

In the present case, the reference to another document, the previously recorded abandonment of Homestead [Ex. 2] would supply the missing description. The question whether reference to another document is adequate to supply an otherwise insufficient description has been considered many times by California Courts.

In the case of the *Matter of the Estate of Caroline Ogburn*, 105 Cal. 95, the description of the property sought to be homesteaded was as follows:

“Western part of Lot No. 5 of said village as laid out by F. S. Freeman's Division of said village, the same being 37 feet front on Main Street of said village, and extending back with parallel lines 190 feet deep, it being a part of the southwest one-quarter of section 21, Township 10 of Range 2 East.”

It was contended by the appellant in the *Ogburn* case that this description was void as there was nothing to show the location of Lot 5. The Court held that the Declaration of Homestead stated that *The family resided upon the lot sought to be homesteaded* (emphasis added) and this statement, together with such description which followed clearly enough designated the premises intended to be claimed as a homestead.

It is to be noted in the case at bar that Cecil M. Jackson, the bankrupt, *resided on the premises* at the time he requested the exemption of the property under the Declaration of Homestead recorded May 21, 1954 as well as at the time Exhibits 2 and 3 were recorded.

The *Ogburn* case is cited with approval in the case of *Donnelly v. Tregaskis*, 154 Cal. 261. The Court said therein at page 263

“ . . . A description of the premises necessarily means such description as will serve to identify the property. To uphold homesteads, which are favored by the law, great liberality in this respect will be allowed, but the rule nevertheless obtains in full force, that the description must be sufficient so that the property may be identified in some legitimate manner. . . .”

Again on page 264,

“ . . . We do not mean, however, to declare the unquestioned rule that where a description is dependent for its sufficiency upon some other instrument, such as a map, the map, properly identified, must be produced, or in some manner established, or the description must fail. . . .”

A reference to a document previously recorded containing the description of property is adequate to furnish the legal description if there is such a document on record.

*Marcone v. Dowell*, 178 Cal. 396.

California Civil Code, Section 1263, requires a description of the property sought to be homesteaded but the cases which interpret this code section and the adequacy of the description do not make a specific legal description mandatory. If the document referred to can be located with reasonable certainty and if said document referred to does contain a legal description, then the document containing the reference does have an adequate description to fulfill the requirements of a Deed and therefore fulfills the requirements of a Homestead Declaration.

## II.

**The Court Erred in Finding as a Matter of Law That the Reference in the Homestead Declaration Recorded May 21, 1954, Was Not a Specific Reference as Required in Conveyances in the State of California.**

The adequacy of the description of the property sought to be homesteaded was considered in the case of *Oktanski v. Burn*, 138 Cal. App. 2d 419. In that case, the description of the property in the Declaration of Homestead referred to two different properties. The Court determined the Declaration of Homestead was adequate. The same argument could have been made in that case as to the inability to determine where the property to be homesteaded was located as has been made by the trustee in the present case. There, the Court had no problem in finding which property was to be homesteaded. It is submitted, the situation there is directly synonymous with

the present action. The description of the property sought to be homesteaded *can* be determined from the previously recorded abandonment of homestead. That Courts can examine the entire record and the evidence before them to determine the correct result to be reached in their decisions can be applied to the present matter under consideration. It is interesting to note that the Order signed by the Court setting aside the Order of the Referee allowing the exemption of Homestead property refers to an Order of the Referee dated January 18, 1957. In fact and in truth, there is no Order of the Referee dated January 18, 1957, but said Order was dated January 8, 1957. Appellant does not argue this technicality. It is submitted that the correct Order, although improperly designated, can be found. So too, in the present action, the correct property sought to be homesteaded can easily be determined. The recording of a homestead is for the purpose of giving notice of the declaring of a claim. A person searching the records of the County Recorder's Office would find the declaration of May 21, 1954. He would not find a description of the property in that document. He would find a reference to an Abandonment of Homestead on or about March 12, 1954. Then, in the proper index, he would find the Abandonment. The abandonment would give a complete description of the property and then if he went out to examine the property he would have found the bankrupt and his family living on the property and there was a six room house and a garage on the premises, as described in Exhibit 1.

The argument might be made that the reference in this Homestead could refer to another piece of property. Such an argument was made in reference to a conveyance in the case of *Joyce v. Tomasini*, 168 Cal. 234. In that case,

a contractor executed a lease for certain land, only describing the land by giving the names of individuals who lived on each side of him. The Court allowed extrinsic evidence to be admitted to establish the exact description of the land. In response to the argument that there might be another tract of land of the same acreage, either in the County where the land was alleged to be located or elsewhere, that was bounded by other land belonging to the same persons as named, the Court held that if such a coincidence existed it was incumbent upon the defendant to plead and prove it. The Court held further that in the absence of such proof, it will be presumed, upon the other facts shown, that these boundaries do identify the tract. In the present action, no evidence has been introduced or has it been claimed at any time that the bankrupt during the period in question owned any property in any other county or anywhere else in Los Angeles City or County that could have been subject or was subject to a Homestead Declaration.

In determining the legal sufficiency of the Declaration of Homestead under consideration, it must be examined in its entirety, to determine if it refers anywhere to another document which will furnish additional information to complete the legal description. That the four corners of a document must be examined to determine its legal adequacy was determined in the case of *Ritchie v. Anchor Casualty Company*, 135 Cal. App. 2d 245, 251.

In examining the entire document, Paragraph (6) of the Declaration refers to:

*“The former declaration of Homestead was abandoned on or about March 12, 1954.”* (Italics added.)

This reference to *the* former Declaration of Homestead denotes, it is submitted, a clear reference to a specific abandonment of a Homestead on the same property. The word THE as defined in Black's Law Dictionary, Third Edition, page 1724 is an article which particularizes the subject spoken of.

### III.

#### The Court Erred in Finding as a Matter of Law That the Homestead Declaration Recorded May 21, 1954, Was Void and of No Effect.

The Courts decision failed to give a liberal construction to California Civil Code, Section 1263, which defeats the purpose of the Homestead Legislation which was enacted for the benefit of the parties claiming the Homestead.

Homestead laws are predicated on public policy. Their purpose being to promote a healthy social order and prevent insolvent persons from becoming homeless.

*Schmidt v. Denning*, 117 Cal. App. 36;

*Phelps v. Loop*, 64 Cal. App. 2d 332;

*Rich v. Ervin*, 86 Cal. App. 2d 386.

The Homestead laws are given a liberal construction in order to advance the beneficial objects and to carry out the manifest purpose of the legislature.

*Greenlee v. Greenlee*, 7 Cal. 2d 579;

*Johnson v. Brauner*, 131 Cal. App. 2d 713;

*Oktanski v. Burn*, 138 Cal. App. 2d 419.

That Homestead laws should be given a liberal interpretation is not a rule of law resting on maudlin sentimentalism. The purpose behind the rule has been clearly



set forth by the California Courts in the above cited cases. To apply a strict interpretation of this statute would defeat the purpose for which the statute was enacted.

The Court in the case of *Oktanski v. Burn*, 138 Cal. App. 2d 419, at page 421 pointed out that if possible they were going to uphold the Homestead Declaration which would otherwise be defective, in the following language:

“It is conceded in appellant’s brief that ‘The street address alone would be sufficient as a description for the purpose of Homestead,’ but it is contended that here ‘we have two complete descriptions of two entirely different properties’; for which reason the Declaration is fatally defective. To adopt appellants’ reasoning, however, would tend to defeat rather than to ‘advance their beneficial objects and to carry out the manifest purpose of the legislature,’ under the rule expressed in *Greenlee v. Greenlee*, 7 Cal. 2d 579, 583.”

Respectfully submitted,

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